IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO.22 OF 2002

Shri Dilip Soma Shetye,
resident of Nagzar, Pernem,
Goa and presently at Central
Jail, Aguada, Goa ... APPELLANT

VERSUS

S T A T E ... RESPONDENT

Mr. M.S. Joshi, Advocate for the Appellant,under Legal Aid Scheme.
Mr. S.N. Sardessai, Public Prosecutor, for the Respondent State.

CORAM : D.G. DESHPANDE &
P.V. HARDAS,JJ.

Dated : February 25, 2003.

ORAL JUDGMENT (PER **D.G. DESHPANDE,J.)**

Heard Mr. M.S. Joshi for the Appellant and Mr. S.N. Sardessai, Public Prosecutor, for the State-Respondent.

2. This Appeal is filed by the accused challenging his conviction under Section 302 of the Indian Penal Code by which he was sentenced to suffer life imprisonment and fine of Rs.5000/-, in default, to suffer rigorous imprisonment for six months.

3. The charge against the accused was that he has murdered his wife Chitra by strangulating her to death on the night intervening between 7th and 8th November, 2000. The victim Chitra, at the time of her death, was at advanced stage of pregnancy, i.e. about 8 months pregnant. According to prosecution, Chitra was married to the accused 18 months before her death i.e. on 25th April, 1999. She went to reside with husband thereafter. The husband, i.e. the accused, was always in need of money for one reason or the other. He used to ask Chitra to bring money from her parents, brothers or sisters. Sometime when he also asked for a loan, Chitra's brother managed to give him Rs.25,000/- from the Bank in the name of Chitra where her brother stood surety. The accused also extracted Rs.85,000/- from Chitra's sister from Bombay who was unmarried and thereafter also he used to make demands of money through Chitra for himself. It is also the prosecution case that the accused did not like Chitra and he had illicit relations with one lady and, therefore, when he and Chitra were alone in the house, he killed her by strangulating her.

4. However, Chitra was taken to the Hospital by the accused with the help of his brother

and other family members where the accused told the Doctors on duty that Chitra fell from the staircase and died. The Doctor noticed some marks of injury on throat but no marks on the other parts of the body. The matter was reported to the Police. A post-mortem was conducted on the body of Chitra and it was found that she died due to strangulation. F.I.R. was thereafter registered at the instance of the Police against the accused under Section 302 I.P.C. and after investigation, charge-sheet was submitted. The accused came to be tried and convicted as stated above. The Appeal is directed against the said conviction.

5. In the trial Court, the prosecution examined as many as 25 witnesses out of which P.W.1 to P.W.6 were the relatives of Chitra and the other witnesses included the witnesses on the panchanama of the scene of offence, the witnesses on the inquest panchanama, witnesses on discovery under Section 27, the Medical Officer, the neighbours, the Investigating Officer and other Police Officers. After the evidence of the prosecution was over the accused was examined under Section 313 of Criminal Procedure Code. He thereafter filed a statement in writing under Section 233 Sub-section (2) of the Criminal Procedure Code stating therein that on the

fateful night, Chitra was not staying with him. That about a week prior to the date of the Incident Chitra had gone to stay in the ancestral house of the accused as there was no toilet facility available in the house which is on the first floor and on that night the accused received a phone call at his residence situated on the first floor, from his ancestral house that Chitra was not feeling well and he should come with the car. Accused went to the ancestral house and took his wife to the G.M.C. Hospital in his car. The accused has also denied to have made any demands from his in-laws or their family members and specifically denied that Chitra's sister Leena staying in Bombay had given him any financial help. The defence of the accused is of the aforesaid nature. However, in the aforesaid statement under Section 233(2) of Cr.P.C. the accused has raised a defence which is totally different from the one put up to the witnesses and brought on record during evidence and the defence of the accused is that Chitra fell from the staircase in his own house and died.

6. Admittedly, this was a case based on circumstantial evidence and the trial Court took the following circumstances to bring home the guilt of the accused:

1. The accused and his wife Chitra Shetye were residing on the first floor of the newly constructed house at Nagzar on the intervening night of 7th and 8th November, 2000;

2. The victim was brought dead to Goa Medical College on 8.11.2000 by the accused and his family members for examination;

3. The Doctor conducted the post mortem examination over the dead body of Chitra and came to the conclusion that the death was caused due to asphyxia as a result of strangulation by using a broad, soft and yielding ligature material around neck which was ante-mortem and fresh at the time of death and was necessarily fatal;

4. The accused was ill treating his wife and was pressurising her to bring money from her parents and the other family members since the time of his marriage;

5. The bed sheet used for committing the crime was attached at the instance of the accused;

6. The accused had taken a false plea that his wife had died on account of a fall from the staircase;

7. The accused had taken a false plea that on the fate-ful night of the occurrence of the incident his wife was staying at his ancestral house.

7. Ultimately, the trial Court came to the conclusion that the prosecution had succeeded in bringing home the guilt of the accused and convicted and sentenced him as stated above.

8. Mr. Joshi, Advocate appearing for the accused, vehemently criticized the judgment of the trial Court on different counts. According to him, firstly, this being a case based on circumstantial evidence, the chain of events sought to be introduced and proved by the prosecution was not at all sufficient to point to the guilt of the accused totally and completely. He stated that firstly there was no motive for the accused to kill his wife. Secondly, according to him, the accused was not prosecuted for ill-treating his wife. Thirdly, according to him, the accused had no reason to demand money from the relatives of Chitra and even if, alternatively, it is accepted that he was given some loan or amount from time to time that could not constitute any motive. Next, Mr. Joshi contended that the memorandum under the discovery panchanama under Section 27 of the Evidence Act was totally contradictory to the evidence on record inasmuch as in the panchanama there was no mention that the signatures of the panchas were obtained on the envelope in which the bedsheet used for commission

of crime was kept. He also contended that a day prior to the statement under Section 27, the house of the accused was searched by the Police wherein other articles were taken charge of and if that was so, there is no explanation as to how the key of the house and the almirah in the house of the accused remained with the accused on the next day when the accused made his statement under Section 27 of the Evidence Act. Mr. Joshi also contended that firstly, the defence of the accused was plausible and even if the defence was found to be contrary to the facts on record or even false, that would not strengthen the case of the prosecution any more because the prosecution must succeed or fall on its own footing. He also contended that the bedsheet with which the accused is alleged to have strangulated his wife Chitra did not bear blood stains or other marks. It was like any other bedsheet in the house and, therefore, the recovery of the bedsheet at the accused did not lead the prosecution case towards conviction. He also criticized the Judgment of the trial Court on the ground that the Judgment is based mostly upon raising false defences by the accused.

9. So far as the extra-judicial confession given by the accused is concerned,

Mr.Joshi contended that the extra-judicial confession could not be of any help to the prosecution because it was not written exactly in the words of the accused and the Doctor had no business to record the extra-judicial confession and the accused had no reason to make that extra-judicial confession to a Doctor who was totally a stranger to the accused.

10. On the other hand, the learned Public Prosecutor contended that there is more than sufficient evidence on record to prove that on the night of the incident Chitra was living alone with the accused in the house. She had not gone to stay in the ancestral house of the accused as alleged by the accused in his defence. Chitra and accused were last seen together between 9.00 p.m. to 9.30 p.m. by one of the witnesses of the prosecution. She was murdered in the intervening night by the accused. He further contended that if Chitra had really fallen from the staircase in the house, then considering the fact that she was in advanced stage of pregnancy, it was expected of the accused to use his phone and call the Doctor for immediate medical treatment and aid or to take Chitra to the nearest Hospital possible. He pointed out that the accused took Chitra to a hospital which was 35 kilometres

away and he had no explanation why there were no injuries on the person of Chitra if she had really fallen from the staircase. The Public Prosecutor also pointed out that the other defence of the accused that Chitra was living at his ancestral house was falsified by the panchanama and other witnesses who had seen Chitra with the accused on the earlier night in the same house where the murder had taken place. The learned Public Prosecutor has further contended that when the inquest panchanama of the body of Chitra was done, it was found that she was wearing red bangles, three on one hand and two on the other hand and the finding of five broken pieces of red bangles on the bed in the house was a direct indication of accused strangulating her. The learned Public Prosecutor contended that the Doctor in this case was an expert in the field having performed more than a thousand operations and even before seeing the bedsheet he gave a correct opinion as to the nature of the instrument used for strangulating and this observation of the Doctor is directly supported by the bedsheet recovered at the instance of the accused under Section 27 of the Evidence Act. The learned Public Prosecutor further contended that the minor contradictions in the evidence of the panch witnesses regarding the dates and signatures could not affect the discovery under

Section 27 of the Evidence Act.

11. So far as the motive for the crime is concerned, the learned Public Prosecutor contended that the accused was a greedy person. Chitra was married at the age of 29 or 30 years. The accused had expressed to the sister of Chitra that he did not like Chitra at all and he was using her as instrument to extract money from different relatives of Chitra on one pretext or the other and there is evidence on record that the accused had illicit relations with some other lady and all this taken together is sufficient for constituting motive for the crime. The learned Public Prosecutor contended that actually if the evidence is proved, as is proved in this case by the prosecution, the accused was liable to be convicted for double murder, i.e. murder of Chitra and the child in her womb because Chitra was about eight months pregnant at the time of her death.

12. The learned Public Prosecutor also contended that the subsequent conduct of the accused was highly suspicious and the raising of a totally false defence was a strong circumstance to be taken against the accused as has been observed by the Supreme Court in **Mandhari v. State of Chattisgarh**

(2002 CRI.L.J. 2630). The learned Public Prosecutor also contended that all the links in the chain of circumstantial evidence were proved by the prosecution without reasonable doubt and there was no reason to interfere with the Judgment of the trial Court.

13. Since the trial Court had laid emphasis on the defence of the accused in the circumstances of the case and had held that the alternative defence raised by the accused is totally false to his own knowledge and since the attack of Mr. Joshi to that observation is directed first, it is necessary to deal with that aspect.

14. The learned Public Prosecutor also contended that apart from the circumstantial evidence on record there was a strong evidence of extra-judicial confession by the accused given to the Doctor. He stated that the Doctor was the most independent person having no animus or grudge against the accused. He was qualified and an expert in the field having performed more than one thousand post-mortems and the extra-judicial confession was given by the accused immediately on the next day of the incident and, therefore, it was recorded in writing by the Doctor in his report to the Police

and, therefore, this extra-judicial confession which fitted in the circumstances of the case and which was totally contradictory to the defences raised by the accused, carried great importance and weightage.

15. The first defence of the accused is that Chitra had gone to reside in his ancestral house since eight days before the incident. It was at that house that she suffered some injuries. Somebody contacted the accused on phone and then the accused took his car from his new house and took Chitra to the G.M.C. Hospital, Bambolim. The second defence of the accused is that Chitra fell from the staircase and died. Both these defences are totally and absolutely false. If Chitra had fallen from the staircase, there would be injuries on her body like bruises and abrasions. The panchanama of the house does not show that the staircase was as high as 15 to 20 feet. It was hardly 10 feet high and the medical evidence does not at all support that Chitra died as a result of fall from that staircase. And a man falling from the staircase does not die instantaneously unless he falls from a great height which is followed by or preceded by some major fractures in the body. Nothing like this was found when the post-mortem was conducted. Not even a simple or single abrasion or

bruise was found on the body nor her clothes were found torn.

16. Secondly, if a wife at the advanced stage of pregnancy falls, she is bound to cry and shout for help. Admittedly, there was telephone in the house of the accused. The accused could phone the persons in the neighbourhood or call Doctor for aid and treatment. But nothing of that sort appears to have been done by the accused.

17. The second defence that Chitra was staying in the ancestral house since about eight days before the incident is also falsified by the direct evidence of the prosecution about Chitra being seen in the house of the accused on the earlier night.

18. P.W.15 Chandrakant Chari has stated that he had seen Chitra on the previous day of her death in the house of the accused. Though this witness turned hostile subsequently, this position supports the case of the prosecution. P.W.11 Tulshidas Laxmikant Raut has also stated that on 6-11-2000 Chitra phoned him because she wanted second loan of Rupees one lakh and requested the witness to stand surety to the accused. On the next

date, i.e. 7-11-2000, P.W.11 went to the house of the accused and he had talk with the accused about the loan proposal and also with Chitra. He was there at 9.10 p.m. for about half an hour. There is no attempt to falsify the witness regarding this particular aspect. Therefore, it is clear that Chitra was in the house of the accused on the night of her murder. The defence of the accused that she was in his ancestral house seven days before the incident is, therefore, belied by the prosecution.

19. The explanation of the accused that Chitra fell from the staircase is also false for the reasons stated above, so also his second defence that Chitra was at his ancestral house. The conduct of the accused after the incident in firstly not calling any doctor, secondly not informing the relatives of Chitra, thirdly in not taking her to the nearest hospital and fourthly giving false explanation to the Doctor at the time of admission, are all admittedly and obviously false.

20. In **Mandhari v. State of Chattisgarh** (supra), the case of the prosecution against the accused/appellant was that on 13-5-1985 at about 4.00 p.m. he killed his wife Kassobal alias Singerjheen by strangulating her. It was also

alleged that he falsely stated to Patel (P.W.1) and Kotwar (P.W.3) that his wife had committed suicide. It is further alleged that only on the advice of Patel and Kotwar that he gave intimation of death to the Police Station on basis of which formal F.I.R. was recorded. That case was also based on circumstantial evidence but the Supreme Court in Para 4 of its Judgment observed and held:

> " The most culpable circumstance found to have been proved and accepted by the courts below against the accused is that he had himself made a false report of commission of suicide by his wife and admitted in his examination under Section 313 Criminal Procedure Code that he was present in the house at the time of incident. His case was that he heard some sound in the adjoining room and when went inside, found his wife hanging by neck with a sari tied on the rafter of the roof of the house. He then untied the sari, brought down the dead body, first reported the matter to the villagers and then to the police."

The Supreme Court then observed:

> " The opinion of the doctor is clear and definite that such ligature mark of 5 cm width in horizontal position cannot be caused by hanging but could have been caused by strangulation . Medical evidence, therefore, completely falsifies the case of the appellant that on his

> return from the field to his house he had found his wife hanging and thus she had committed suicide. The conduct of the accused is also not natural. When he found his wife hanging by neck he neither raised any hue and cry nor called any v illagers living nearby. He all alone brought down the body hanging from the roof. He thereafter did not report the matter immediately."

The Supreme Court, in Para 5, therefore, has held that considering the evidence and explanation given by the accused in his examination under Section 313 Cr.P.C. wherein the accused has admitted that he was present in his house and that his defence being falsified by the medical evidence and the fact that they were not living a congenial marital life coupled with the unnatural conduct of the accused subsequent to the incident --- cumulatively led only to one irresistible conclusion that the accused alone was the author of the crime and had taken a false defence that he had seen the deceased to have committed suicide by hanging herself. The Supreme Court, therefore, dismissed the Appeal by upholding the conviction.

21. While appreciating the arguments of Mr. Joshi and the learned Public Prosecutor, the aforesaid findings of the Supreme Court as against the facts of the present case will have to be taken

into consideration.

22. So far as the motive part is concerned, Mr. Joshi contended that the prosecution has miserably failed to prove any motive. We are not in agreement with him. It is true that in cases based on circumstantial evidence, motive plays an important role. But, in any case, there cannot be direct evidence of motive. The prosecution in this case has tried to attribute two motives to the accused: one is his greediness and the other is his being discontent or dissatisfied with Chitra and, in our opinion, the prosecution has succeeded in proving this part of its case.

23. So far as the greediness of the accused and his attempt to extract money is concer ned, P.W.1, who is the brother of Chitra, has stated that after about six months of the marriage, the accused told him that he was in need of money for expanding his business. P.W.1, therefore, suggested that he take Bank loan and accordingly, loan of Rs.25,000/- was obtained in the name of Chitra where P.W.1 and his brother-in-law Ramesh Raut stood sureties along with the accused as third surety. To this part of the evidence of P.W.1 it was tried to be suggested that the loan was repaid by the accused.

However, the witness has specifically stated that the accused made some payments, but in cross-examination he stated that a loan balance of Rs.20,000/- was paid by P.W.1. P.W.2 is the father of Chitra. He has stated that after six months Chitra started asking money from him. He had paid her Rs.300/- to Rs.500/- on about three or four occasions. The accused purchased a second-hand Maruti car about a month or so prior to Chitra's death, and Chitra came and asked him to give Rs.10,000/- to give to the accused for the purpose of buying the car. Chitra told P.W.2 at that time if the amount is not paid the accused would trouble her. The third witness on the point of demand and payment is P.W.3, sister of Chitra by name Leena, residing in Bombay. She was unmarried and she has stated that six months after the marriage, Chitra came to Bombay along with the accused. The accused asked for a long amount of Rs.50,000/- promising to pay that amount later. Leena, thereafter, sent an amount of Rs.35,000/- by Demand Draft. She has further stated that on 25-11-1999 the accused again contacted her for cash of Rs.50,000/- for his business. Next day Chitra called her and asked her to send the amount or otherwise, the accused would harass her and make her life miserable. Thereafter, P.W.2 sent the Demand Draft for Rs.50,000/-.

24. P.W.3 stated that again in the month of March the accused went to Bombay alone and demanded Rs.50,000/- which was denied. About these two payments of hand loans of Rs.35,000/- and Rs.50,000/- there is absolutely no cross-examination and it is fully established by documents. It is, therefore, clear from the aforesaid evidence and circumstances that the accused was in the habit of extracting money from the relatives of Chitra and he had succeeded in getting a loan of Rs.25,000/- in the name of Chitra and also succeeded in extracting Rs.85,000/- from Leena. He also tried to ask for another loan of Rs.50,000/- from Leena, which she declined.

25. The second aspect of the matter is that according to Mr. Sardessai, the Public Prosecutor, sufficient material is brought on record to show that the accused was not satisfied with Chitra. This evidence has been given by Leena herself P.W.3. She has stated in her examination-in-chief that when the accused came for the first time and demanded and was given Rs.35,000/- at Bombay, he told Chitra or gave indication to her that Chitra was not good looking, was not smart enough nor well qualified and he was looking out for a working woman as his wife. He wanted his wife to

be qualified like B.Pharm or M.Pharm so that he cold run a Pharmacy which he proposed to open. P.W.4 Sonali Shetye, who is the daughter of one of the sisters of Chitra, has stated that Chitra told her, i.e. Sonali, and her mother, that the accused was visiting the house late and was keeping illicit relations with other ladies. P.W.5, who is the wife of Chitra's brother, has stated in her evidence that very often Chitra used to complain to her that the accused was not behaving well with her on the ground that she was not good looking. The other witnesses have stated that the accused was neglecting Chitra. All this evidence taken together clearly shows that firstly the accused was not satisfied with Chitra. He was not considering her to be equal to him. He was treating her with prejudices and biases, but at the same time he was using her to extract money as and when needed from the relatives of Chitra.

26. In order to show that the accused had illicit relations with other ladies, the prosecution has tried to rely on a letter taken from the almirah of the house of the accused. But, in our opinion, the said letter is of no use to the prosecution, firstly because there is no proof that such a letter was sent by the accused to anybody else and there is no explanation how the accused could retain the said

letter. But even if the said letter is disregarded and even if there is no strong evidence to show that the accused was having illicit relations with somebody else, there is strong circumstance to show that Chitra was not leading a congenial matrimonial life and the accused was repeatedly pressurizing her, directly or indirectly, in bringing money from her parents. Similarly, the evidence of one lady witness of the prosecution who was the Branch Manager, to the effect that the accused proposed to marry her and she rejected his proposal is also of no use to the prosecution.

27. These circumstances, in our opinion, are strong enough to prove motive against the accused.

28. The circumstance, therefore, proved by the prosecution so far and discussed by us so far is that Chitra was in the house of the accused on the night when she was killed. The accused was in the house. No outsider or stranger was in the house on that day. The accused had a motive to kill Chitra and, thirdly, both the defences of the accused are totally and palpably false, so also his conduct most unnatural.

29. The next part of the prosecution case which was strongly criticised by Mr. Joshi is recovery of the bedsheet from the almirah in the house of the accused under Section 27 of the Indian Evidence Act. But before considering that evidence, it is necessary to consider the evidence of the Doctor who performed the post-mortem and the cause of death given by him. The prosecution examined P.W.8 Dr. Silvano Dias Sapeco. He has stated that he had performed post-mortem on the body of Chitra. She had height of 5 feet 4 inches and a well built personality and he noted that there was a 34 cm x 1.5cm cord transverse pressure abrasional mark seen around the neck of Chitra. Its prominence was most conspicuous at front and left outer aspect along an area of 13 cms x 1.5 cm. He further stated that the aforesaid described mark could be caused by application of a broad, soft and yielding ligature at material around the neck of the since deceased pregnant woman which was ante-mortem and fresh at the time of death. In his cross-examination he has stated that he has conducted post-mortem in about 1000 cases. Admittedly, therefore, P.W.8 is an expert in his field and the description of the material given by him which was used as "broad, soft and yielding ligature material" (without seeing the bedsheet at that time because the bedsheet was not

recovered at all at that time) strongly supports the case of the prosecution not only about the cause of the death but the material used in strangulating Chitra. It is in this background that the argument of Mr. Joshi and his attack on recovery under Section 27 will have to be appreciated.

30. The prosecution examined P.W.12 to prove the discovery memo which was exhibited as Exhibit 27. The witness stated that he was called at Pernem Police Station where the accused was present and the accused made statement that he had kept bedsheet in his house and he was willing to show it. Thereafter, they went to the house of the accused. The door of the accused was locked but it was opened by the accused with the key in his possession. They found a cupboard in the bedroom. The key of the cupboard was kept on the top of the cupboard and the accused removed the said key and opened the cupboard and took the bedsheet. The said bedsheet was put in the envelope and the envelope was packed and sealed in their presence and he also signed the envelope at point A.

31. This evidence of the prosecution was challenged by Mr. Joshi on the ground that the entire story is false because, according to the

prosecution, the house of the accused was searched on 9-11-2000 when spot panchanama was made and if at that time the accused had opened the house with the key in his possession, then neither the key of the house could remain with the accused nor the key of the cupboard could remain with the accused. There appears to be some substance in the submission made and consequently, the discovery evidence is not of much help to the prosecution. However, the fact remains that as per Doctor P.W.8, a soft material was used for strangulating and a soft bedsheet was easily available in the house of the accused for committing the murder. It is not that some unusual instrument which could not be ordinarily found was used for commission of the crime as the accused had certain bedsheeets one of which he could use. Therefore the medical evidence which proves use of bedsheet for committing murder by strangulation has to be accepted as it is and in that case even if it is accepted that the bedsheet used for strangulation was not found by the prosecution, even then the case of the prosecution is not affected in any manner whatsoever. We, therefore, hold that even if the discovery of the bedsheet is disregarded, and which we disregard, that does not jeopardize the prosecution case at all.

32. The other piece of evidence strongly

relied upon by the prosecution was the evidence of extra-judicial confession. This confession came to be recorded by P.W.8 Dr. Sapeco. He has stated in his evidence that the accused was referred to him on 9-11-2000 for his medical examination and at that time the accused confessed to have killed his wife. He produced the letter of the Police in that regard dated 9-11-2000 (Exhibit 60) and also produced the reply given by him regarding the examination of the accused and the extra-judicial confession at Exhibit 19 dated 9-11-2000. In his oral evidence also he stated that at the time of his examination the accused admitted that he strangulated his wife in the early morning hours of 8-11-2000 with the bedsheet which was used to cover the body while sleeping. Exhibit 19 which is written record also clearly states about this confessional part. It is pertinent to note that the letter of the Police and the report of the Doctor in that regard is dated 9-11-2000 and the post-mortem was conducted by the Doctor on 8-11-2000. It is clear that on the date of the post-mortem, no confession was made by the accused before the Doctor and the Doctor had given his opinion on the material used for strangulation independently on the basis of his experience and observation.

33. As against this piece of evidence, Mr. Joshi contended that Exhibit 19 bears the date 8-11-2000 whereas the letter of the Police is dated 9-11-2000. According to him, therefore, Exhibit 19 is a fabricated document. We cannot accept this submission because we perused the Exhibit 19 and when Exhibit 60, the letter of the Police Sub-Inspector to the Police Surgeon is dated 9-11-2000, Exhibit 19 which is the report of the examination of the accused and his confessional statement is dated 9-11-2000 and not 8-11-2000. The mistake has cropped up in the paper-book which is prepared and there is no mistake in the original.

34. Looking, therefore, to the fact that the Doctor (P.W.8) who was highly skilled and professional man having no connection with the accused or the deceased in any manner whatsoever and having an independent status, the confession of the accused in the crime immediately on the next date at about 4.15 p.m. supported by and corroborated by the observations of the Doctor about the material used for strangulation and other circumstances strongly and fully prove the guilt of the accused.

35. There is one more strong circumstance against the accused and that is, when he was examined

by Doctor P.W.8 on 8th November,2000, the Doctor found that all the finger nails of the accused were deeply cut. The Doctor could not obtain the nail clippings. The Doctor tried to contend that the accused deliberately cut his finger nails to destroy the evidence that might have been there of blood stains or the froth that came out from the mouth of Chitra. In fact, this is a strong circumstance for which there is no explanation from the accused as to why he cut his finger nails so deep. However, we will not use this circumstance because in the arrest panchanama of the accused, the Police did not make any mention that the finger nails of the accused were cut.

36. It was repeatedly urged by the Advocate for the accused that all the links in the chain of circumstances not having been fully established, the accused is entitled for benefit of doubt. Mr. Joshi drew our attention to Para 7 of the Judgment wherein the Sessions Court has given seven circumstances and all the criticism of Mr. Joshi against the said seven circumstances, except the immediate recovery under Section 27, requires to be rejected and we reject the same.

37. A Judgment of the Supreme Court reported in (1992) 3 Supreme Court Cases 106 - **Ganeshlal v. State of Maharashtra** - was referred to us and particularly the Para thereof. In that case, the Court found that when the deceased was burning due to fire lit after pouring kerosene on her, the Appellant and his family members were present in the house, they made no attempt to save her and if the normal human conduct is required to be considered, then the inmates of the house would have made every endeavour to save her life. If it was a case of suicide they would call people to come to her rescue and save her life.

38. Thereafter, the Supreme Court observed that "the conduct of an accused in an offence previous and subsequent to the crime are relevant facts. Absence of any attempt to save the life of the deceased Kanchana while she was burning and was charred to death, their conduct in not attempting to give any medical aid, the conduct of the appellant immediately after the deceased was soaked with kerosene and litting fire after closing the door A-6 obviously opened it after ensuring that she had died, ...these are most telling and relevant crucial facts apart from repulsive inhuman conduct." Further, the Supreme Court observed "<u>the false plea of suicide</u>

is yet another relevant fact. When the death had occurred in their custody the appellant is under an obligation in Section 313 Cr.P.C. statement at least to give a plausible explanation for the cause of her death. No such attempt was even made excepting denying the prosecution case. These facts completely are inconsistent with the innocence, but consistent with the hypothesis that the appellant is a prime accused in the commission of gruesome murder of his wife". In the instant case also the subsequent conduct of the accused is not only highly suspicious but proves his guilt. In his statement under Section 313 Cr.P.C. he has raised a totally false and unpalatable plea. His case that his wife fell from the staircase is totally false so also his defence that she was not living with him since eight days before. Admittedly, the deceased was in the custody of the accused. Therre were no outsiders in the house apart from the accused and the deceased and, therefore the Supreme Court's judgment referred to above strongly supports this case.

39. To sum up, we hold that the trial Court was justified in convicting the accused. We also hold that the prosecution has proved that the accused was a greedy man and he had a motive to kill Chitra. We also hold that Chitra was not leading a

congenial matrimonial life. She was used as an instrument for extracting money from her relatives by the accused. He has extracted Rs.85,000/- from her sister Leena and also succeeded in getting a loan of Rs.25,000/- and fulfilling his other miscellaneous demands from time to time. It has come on record that he was not liking Chitra at all and he had the courage to tell it to Leena, who was the real sister of Chitra. So far as the incident is concerned, there is strong and convincing evidence on record that Chitra was in the house of the accused on the night of the incident. That she did not have any injury on her body to suggest that she was fallen from the staircase. Doctor's opinion clearly and fully establishes the cause of death as strangulation by using a broad soft yielding ligature material. There is evidence of ill treatment though not coming in the category of Section 498 and coupled with this fact, raising of both the false pleas of the accused, leads to the irresistible conclusion that it was the accused, and accused alone, who was responsible for the murder of his wife Chitra. Therefore, there is no merit in this Appeal and, therefore, it requires to be dismissed.

40. We must make a note here that, as observed by us earlier, actually a charge for double

murder should have been framed against the accused, namely, for murder of Chitra as well as the murder of child in the womb of Chitra. But the trial Court framed the charge for causing murder of Chitra alone. Now, at this appellate stage, we do not wish to add or amend the original charge.

41. The Appeal is therefore dismissed.

D.G.DESHPANDE,J.

P.V.HARDAS,J.

ac.